IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPEAL NO. 485 OF 1988.

The State of Maharashtra ..Appellant.

vs.

Sham Namdev Sonawane ..Respondent.

Shri D.P. Adsule, A.P.P. for the State.
None for the respondent.

CORAM: V.M.KANADE,J.
DATED: 10-1-2005.

ORAL JUDGMENT:

1. The State has filed this appeal against the judgment and order passed by the Special Judge, Thane, in Special Case No.4 of 1984. By the said judgment and order dated 28.1.1988, the Special Judge, Thane, acquitted the accused of the offences punishable under section 161 of the Indian Penal Code read with section 5(1)(d) r/w section 5(2) of the Prevention of Corruption Act.

2. The prosecution case in brief is that Shri Sham Namdeo Sonawane was working as Forester in Dugar Forest Round in Bhiwandi range. He was residing in the official quarters given to him at village Waret.

According to the prosecution, Vinayak Motiram Kadam was working as a Primary Teacher at village Ghotgaon. His wife was also working as a Primary Teacher in the same village. He purchased a plot of land on 3.1.1983 and intended to construct a house on the said plot. He also purchased a cattle shed from one Ladyaka Thakare- P.W.4, which was situated at a distance of 1 km.from his house in the house of Kadam. P.W.2- Kadam made an application for demolishing cattle shed on 10.3.1983 to the Range Forest Officer, Bhiwandi. In the said application he made a request to the Range Forest Officer to make a panchanama in respect of valuation of the cattle shed. Before any order was passed on the said application, P.W. 2-Kadam demolished the cattle shed and transported its timber to village Ghotgaon in two bullock carts and dumped the pieces of the timber in the nearing house. Thereafter, he made enquiry with the Range Forest Officer and on 14.3.1983 he was informed that his application had been allowed. He accordingly met the accused and requested him to make panchanama of the timber of the cattle shed. Prosecution case is that the accused demanded Rs.1,000/- for making panchanama as it was demolished without any permission or intimation to the Forest Office. Accordingly, on the next day, i.e. 15.3.1983 he went to the house of

P.W.2- Kadam along with other forest officers and had lunch at the place of P.W.2- Kadam. After accused demanded Rs.1,000/- from P.W.2, P.W. 2 called his landlord Kisan Patil. Thereafter P.W. 2- Kadam brought the amount of Rs. 1,000/- and handed over the same to Kisan Patil, who counted it and returned the amount to Kadam, who, thereafter paid the same to the accused. Prosecution case is that the accused informed P.W.2- Kadam that he would issue receipt for the said payment later on.

3. According to the prosecution, one of the forest guards- Gavhane asked the accused to issue receipt for payment of Rs. 1,000/- made by Kadam. The accused refused to do so and there was quarrel between the two. Thereafter complaint was filed by P.W.9-Gavhane to the District Forest Officer who directed that enquiry be made in the allegation made against the accused. Accordingly, statements were recorded and complaint was filed against the accused. Ultimately, permission of the Judicial Magistrate was obtained to investigate the complaint and sanction to prosecute was also granted by P.W.8- Chief Conservator of Forest and charge sheet was thereafter filed against the accused.

4. The trial Court after appreciating the evidence adduced by the prosecution came to the conclusion that the prosecution has not proved its case beyond reasonable doubt and accordingly acquitted the accused of the offences with which he was charged.

5. Shri Adsule, learned A.P.P. appearing on behalf of the State took me through the oral and documentary evidence on record and also judgment and order of the trial Court. He submitted that the trial Court has erred in coming to the conclusion that the prosecution has failed to establish the offence against the accused. He further submitted that demand and acceptance of bribe was proved by the evidence of P.W.- Kadam, P.W.7-Gaikwad and P.W.9- Gavhane. He submitted that the prosecution has further proved payment of money to the accused through evidence of P.W.5-Keshav Bapu Patil and P.W.6-Madhukar Patil. He submitted that the trial Court has erred in coming to the conclusion that evidence of these witnesses was not acceptable as prosecution case was improbable.

6. The prosecution has examined P.W. 2- Kadam, who stated that he had purchased the property at village Ghotgaon and that he intended to construct his residential house on the said plot of land. He also

stated that he had purchased the cattle shed and intended to use its timber for construction of his house. From his evidence it can be seen that he had demolished the cattle shed before necessary permission was granted by the Forest office. Under the provisions of the Forest Act, timber cannot be transported from one place to another without obtaining permission from the forest office. P.W. 2-Kadam had applied for permission to carry timber on 10.3.1983. However, before such permission was granted, on the very next day, on 11.3.1983 he demolished the cattle shed and transported its timber to Ghotgaon in two bullock carts. Thus, he has committed offence under section 41-A of the Forest Act. The accused took inspection of the premises. He questioned P.W.2 as to why cattle shed was demolished before permission was obtained and asked him to pay a fine of Rs.1,000/-. P.W.2 has stated in his evidence that when payment of Rs. 1,000/- was made by the accused other Forest Guards viz. P.W. 7- Gaikwad and P.W.9-Gavhane told the accused that P.W.2-Kadam was their man and that accused should do his work after accepting the said amount towards expenses. The prosecution has examined P.W.7- Gaikwad and P.W.9-Gavhane to corroborate the statement of P.W.2-Kadam. However, none of these witnesses have stated that the

accused had demanded Rs.1,000/- as bribe. On the contrary, these witnesses have stated that the accused after accepting the amount of Rs.1,000/- had informed P.W.2- Kadam that he would get receipt or the said amount later on.

7. Apart from this, it has come on record that on the very next day P.W.9- Gavhane had demanded receipt for the payment of Rs. 1,000/- paid by Kadam when there was altercation between the two and a complaint was lodged by accused against Gavhane and cross complaint was lodged by Gavhane against the accused. Both P.W.7 and P.W.9 also have not supported the statement of P.W.2- Kadam regarding certain material particulars. P.W.7 has not stated that after amount of Rs.1,000/- was demanded by the accused he told him that P.W. 2 was their man and that accused should do his work. Thus, P.W.7 and P.W.9 have tried to protect themselves regarding the allegations made by P.W.2. Moreover, P.W.7 and P.W. 9 appear to be in league with P.W.2. Thus, it is difficult to accept the testimony of P.W.2, P W.7 and P.W.9.

8. The prosecution also appears to have made an attempt to create evidence regarding procurement of Rs.1,000/- which were to be paid to the accused.

According to P.W.2- Kadam, the said amount was sent by his wife Indumati through P.W.6- Madhukar Patil. It has come on record that the accused had already Rs.3500/- in his possession in his house. Indumati had not withdrawn this amount of Rs..1,000/- from the bank. There was no occasion for Indumati to have carried the said amount and then to have sent said amount with a young boy of 12 years age. She would have very well handed over the said amount to her husband before he left the house. As it is, there was no necessity to carry this amount as amount of Rs.3500/- was already in the house. This evidence indicates that an attempt is made to create evidence in order to prove that the said amount was paid to the accused. Further P.W. 5- Keshav Patil also appears to be a got up witness. P.W. 5 is the landlord of P.W.2- Kadam. P.W. 2 in his evidence has stated that before handing over the amount to the accused he called P.W.5- Keshav Patil and handed over money to him, who counted the same and handed it over to P.W. 2, who then handed over the same to the accused. It is not possible to accept the version of P.W.2 as ordinarily, person who accepts bribe would not do so in the presence of any witnesses. Therefore, P.W.5 appears to be a got up witness.

9. Another fact which needs to be considered is that the accused had accepted the said amount of Rs.1,000/- towards fine. While accepting the said amount he has not stated that the said amount was accepted as bribe. Thus demand and acceptance have not been proved by the prosecution.

10. The trial Court has passed a reasoned order and has considered the evidence of all the witnesses and has rightly come to the conclusion that the prosecution evidence suffers from basic infirmities and has, therefore, come to the conclusion that in view of the broad improbabilities, the prosecution case could not be accepted. The trial Court, in my view, has correctly appreciated evidence and I concur with the finding recorded by the trial Court. There is thus, no merits in the submissions made by the learned A.P.P. The order passed by the Special Judge, Thane, is accordingly confirmed. Appeal is dismissed.